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December 18, 2000

Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

SUB1

Re: Ex Parte 582 - Major Rail Consolidation Procedures

Revised Standards for Preemption of Collective Bargaining Agreements
(Pursuant to Section 11323 of the Interstate Commerce Act)

This letter is submitted by the Brothehood of Railroad Signalmen in reply to comments filed with respect to the above, and what has been commonly referred to as "cram-down." The BRS has opposed the recent practice of the rail industry, arbitration boards and the STB to use preemption procedures to force labor concessions in approved transactions. The BRS has insisted that collective bargaining agreement changes should be made only through bargaining. We continue to pursue this philosophy as appropriate in discussions with rail carriers and, if necessary, in the courts and through legislative means. The BRS argues that wholesale imposition of railroad preferred work rules exceeds what is intended in the Interstate Commerce Act.

We were pleased in September 99, to see legislation introduced by Senator Michael Crapo, R Idaho (S 1590) commenting, "I am introducing a very important piece of legislation ... aimed at correcting an injustice for railroad workers... my bill would end the onerous procedure of the STB to override, modify or cancel collective bargaining agreements between railroads and their employees." We were also pleased when in December Senator Ernest Hollings, in discussing your reappointment further commented, "The carriers and their employees have been working on the terms of an agreement which would create new rules pertaining to the abrogation of collective bargaining agreements." We supported your decision in March of this year to place a hold on further mergers until the issues, including those associated with employee dislocations and Cram-Down are resolved.

The BRS notes that most recently merger implementation has not gone smoothly. Indeed the railroad industry, shippers and the public have not yet fully recovered from the service disruptions associated with the previous round of mergers. In the last year news articles have widely reported that NSR and CSXT are unable to move freight on time resulting in the cancellation of business. Some, like package courier services and automotive parts delivery, required years of dependable service from employees only for the relationships to be ruined as a result of post-merger gridlock. In September of this year a leading chemical producer sued NSR over service disruptions arising from the acquisition of Conrail's business.

With this backdrop we are especially pleased that the STB has concluded that it needs to revisit its merger rules in light of the current transportation environment and the prospect of a North American transportation system composed of as few as two transcontinental railroads.

The BRS and other employee representative organizations met with the nation's rail carriers through its bargaining representatives, the National Carriers Conference Committee (NCCC). In discussions through March of this year significant progress was made at negotiating a procedure that considered the interests of employee and employer. It was our impression that these negotiated changes would serve the interest of the employees in placing limitations on the use of preemption while it would serve the interest of the rail carriers by providing a workforce subject to less disruption, therefore better capable of dealing with the challenges presented by the merger of large rail carriers with dissimilar work rules etc.

The progress ended when the STB issued its moratorium on merger procedures, due in part to the removal of pressure (from both sides) to resolve the issue. The NCCC asked simply to indefinitely postpone further talks once the moratorium was issued.

We think the STB recognized that further rationalization of rail carriers as unnecessary when it stated in March of this year, "It does not appear that there are significant public interest benefits to be realized from further rationalization of rail route systems . . . Looking forward, the key problem faced by railroads . . . is linked to adding to insufficient infrastructure, not eliminating excess capacity." It also appeared that STB presently sees less need for forced changes to collective bargaining agreements. In the preliminary decision in Ex Parte No. 582, the STB wrote "The Board supports early notice and consultation. . . Otherwise, the Board respects the sanctity of collective bargaining agreements except to the very limited extent necessary to carry out an approved transaction."

The problem with the above statement, although it appears to address some of the concerns of employees, is that similar language has been established by the Board in the past without the intended result. For example Carmen III contained the language, "Cram down [may be used only where] clearly necessary to make the merged entity operate efficiently as a unified system rather than as two separate entities." Following that decision in a dispute involving the BMWE, NSR and CSXT referee Friedenberger (1999) concluded that a complete override of a collective bargaining agreement was warranted. In the instance of shop-craft employees entire collective bargaining agreements were replaced with other CBAs even though there was not any integration of employees or other considerations making agreement changes remotely necessary.

It is well established that bargaining under the current process leaves employees with little leverage to reach a settlement in its interest. It is also clear that revisions to rail consolidation procedures are needed that contemplate the business climate where elimination of excess capacity is not as important as insufficient infrastructure and reduced capability. We have long argued that preemption of collectively bargained rights were intended only so that non-labor related transportation benefits can be realized for the public good and not to force imposition of work rule concessions on employees only minimally affected by a merger.

The negotiating process, that began late last year and continued through March of this year with the issuance of the moratorium on rail mergers, where the employee representatives

and the rail carrier representatives attempted to resolve these issues collectively should continue. The STB can return leverage to the process by doing two things: 1) granting the parties a specified period of time in which to resolve this issue jointly absent the STB issuing a final rule in this specific area and 2) indicate to the industry that the Board is considering a final rule that could prohibit any arbitrator acting under the authority of the STB to override, modify or abrogate a collective bargaining.

If the Chairman and the STB mean for its October 2000 preliminary decision to respect the sanctity of CBAs except to the very limited extent necessary to carry out an approved transaction the parties should be encouraged to reach agreement that respects their respective interests. Only if, it is intended as rhetoric to provide the appearance of supporting this concept, should the Board issue the language contained in its October 2000 preliminary decision or attempt to write revised preemption procedures itself.

Sincerely,

W. Dan Pickett

W.D. Pickett
Brotherhood of Railroad Signalmen

cc: Rail Chiefs
F.E. Mason, BRS Vice President

Copies sent by First Class Mail to all persons on offical service list. W.D. Pickett

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